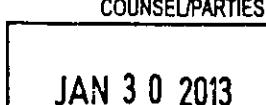


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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

8 PAUL A. SKINNER, }  
9 Petitioner, } 3:13-cv-00019-RCJ-VPC  
10 vs. }  
11 GREG SMITH, et al., } ORDER  
12 Respondents. }

14 The petitioner has presented the Court with a petition for writ of habeas corpus pursuant to 28  
15 U.S.C. § 2254 and an application to proceed *in forma pauperis*. ECF. No. 1.

16 The petitioner's application to proceed *in forma pauperis*, including the financial certificate,  
17 establishes that the petitioner qualifies for *in forma pauperis* status. He shall be granted leave to proceed  
18 *in forma pauperis*, and shall not be required to pay the filing fee for his habeas corpus petition. The  
19 petition will be ordered filed and docketed, and served upon the respondents, but the respondents will  
20 not yet be required to respond to it.

21 As required by Rule 4 of the Rules Governing Section 2254 Cases in the United States District  
22 Courts, a preliminary review of the petition and attachments raises a question which the petitioner shall  
23 be allowed to address before this action proceeds further.

24 It appears from the documents submitted that this petition should be barred as untimely under  
25 28 U.S.C. § 2244(d). That section states,

26 (d)(1) A 1-year period of limitations shall apply to an application for a writ of habeas corpus by a person in custody pursuant

1 to the judgment of a State court. The limitation period shall run from  
2 the latest of—  
3

4                     (A) the date on which the judgment became final by the  
5 conclusion of direct review or the expiration of the time for seeking  
6 such review;

7                     (B) the date on which the impediment to filing an  
8 application created by State action in violation of the Constitution or  
9 laws of the United States is removed, if the applicant was prevented  
from filing by such State action;

10                    (C) the date on which the constitutional right asserted  
11 was initially recognized by the Supreme Court, if the right has been  
12 newly recognized by the Supreme Court and made retroactively  
13 applicable to cases on collateral review; or  
14

15                    (D) the date on which the factual predicate of the claim  
16 or claims presented could have been discovered through the exercise of  
17 due diligence.

18                   (2) The time during which a properly filed application for State  
19 post-conviction or other collateral review with respect to the pertinent  
20 judgment or claim is pending shall not be counted toward any period of  
limitation under this subsection.

21                  28 U.S.C. § 2244(d).

22                  For convictions that become final prior to the enactment of the 1996 amendment, a petitioner had  
23 until April 23, 1997 to file his federal habeas petition. *See Calderon v. United States District Court*  
*(Beeler)*, 128 F.3d 1283, 1287 (9th Cir. 1997) (concluding that allowing AEDPA's limitations period to  
begin before the statute's enactment would have impermissible retroactive effect), *cert. denied*, --- U.S.  
----, 118 S.Ct. 899 (1998), overruled in part on other grounds by *Calderon v. United States District*  
*Court (Kelly)*, 163 F.3d 530 (9th Cir. 1998), *cert. denied*, --- U.S. ----, 119 S.Ct. 1377 (1999).

24                  The one year period is tolled while a properly filed application for post conviction or other  
25 collateral relief is pending before a state court. 28 U.S.C. § 2244(d)(2). A properly filed application is  
an "application submitted in compliance with the procedural laws of the state in which the application  
was filed." *Dictado v. Ducharme*, 189 F.3d 889, 892 (9th Cir. 1999). These procedural laws include  
those governing the time and place for filing. *Id.*, citing *Lovasz v. Vaughn*, 134 F.3d 146, 147 (3d Cir.  
26

1 1998).

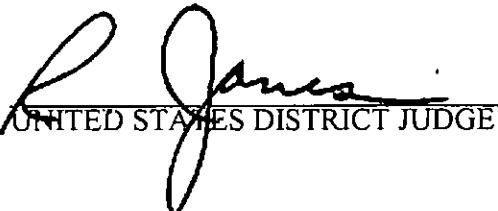
2 Here, petitioner indicates that he was convicted on June 4, 1997 and did not appeal that  
3 conviction. Thereafter, some five years later, he filed a state post-conviction petition, and the appeal of  
4 the denial of that petition was completed on November 5, 2003. He also indicates that none of the  
5 grounds in the instant petition have been presented to the Nevada Supreme Court for their review.<sup>1</sup>

6 Before dismissal on grounds raised *sua sponte* by this Court, petitioner shall be given an  
7 opportunity to show cause why this action should not be dismissed as untimely. *See Boyd v. Thompson*,  
8 147 F.3d 1124, 1128 (9th Cir. 1998).

9 **IT IS THEREFORE ORDERED** that the application to proceed *in forma pauperis* (ECF No.  
10 1) is **GRANTED**. The Clerk shall **file and electronically serve** the petition upon respondents. In  
11 addition the Clerk shall return a copy of the habeas petition to Petitioner.

12 **IT IS FURTHER ORDERED** that Petitioner shall have thirty (30) days to show cause why his  
13 petition should not be dismissed with prejudice under 28 U.S.C. § 2244(d). Respondents shall have  
14 fifteen (15) days to respond, if they desire.

15 Dated this 29<sup>th</sup> day of January, 2013.

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26

UNITED STATES DISTRICT JUDGE

25 <sup>1</sup> The issue of exhaustion of the grounds for relief is a separate, also disqualifying matter, which  
26 need not be addressed at this time. *See* 28 U.S.C. § 2254(b)(1).